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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.       | CONFIRMATION NO.       |
|---|-------------|----------------------|---------------------------|------------------------|
| 10/807,871  | 03/24/2004  | David E. Simmen      | STL919990184US3           | 5489                   |
| 45729   | 7590        | 11/23/2009           |                           |                        |
| GATES & COOPER LLP<br>6701 CENTER DRIVE WEST<br>SUITE 1050<br>LOS ANGELES, CA 90045 |             |                      | EXAMINER<br>NGUYEN, CINDY |                        |
|   |             |                      | ART UNIT<br>2161          | PAPER NUMBER           |
|   |             |                      | MAIL DATE<br>11/23/2009   | DELIVERY MODE<br>PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |   |  |
|------------------------------|--------------------------------------|---|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/807,871 | <b>Applicant(s)</b><br>SIMMEN, DAVID E. |  |
|                              | <b>Examiner</b><br>CINDY NGUYEN      | <b>Art Unit</b><br>2161                 |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 September 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 12 and 26 is/are rejected.
- 7) ☒ Claim(s) 2-11, 13-25 and 27-33 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

In view of the BPAI Decision Examiner Reversed filed on 09/16/09, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37

CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Apu M Mofiz/

Supervisory Patent Examiner, Art Unit 2161

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 2161

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 12, 13, 23 and 24 are rejected under 35 U.S.C. 102(e) as being anticipated by Chaudhuri et al. (US 6363371, hereafter Chaudhuri).

Regarding claims 1, 12 and 23, Chaudhuri discloses: A method, an apparatus, an article of manufacture for optimizing execution of a query that accesses data stored on a data store connected to a computer (see col. 2, lines 59 to col. 3, lines 12; col. 4, lines 57-62), comprising:

using statistics on one or more expressions of one or more pre-defined queries to determine an optimal query execution plan for the query (i.e., query optimizer 224 relies/using on statistics on columns of tables referenced in a query to estimate/determining, ...query optimizer choose among possible execution plans for the query..., see col. 6, lines 35-50, lines 25-28 Chaudhuri);

executing the optimal query execution plan for the query in order to access the data stored on data store connected to a computer and then output the accessed data (i.e., processes queries to retrieve, insert, delete or update/access data in database/data store..., the query optimizer 224 may then choose among possible execution plans for query...see col. 6, lines 20-25, lines 40-45; then query optimizer 224 returns plan 232 through the show plan interface of the Microsoft SQL server...col. 7,

Art Unit: 2161

lines 45-52; col. 10, lines 61-65, Chaudhuri).

Regarding claims 2, 13, 24, Chaudhuri discloses: wherein each of the pre-defined queries is associated with an automatic summary table, a materialized view or a view (i.e., statistic is a summary structure/table associate with a set of one or more columns in a relation and is a histogram... see col. 6, lines 48-60).

### ***Allowable Subject Matter***

Claims 3, 14, 25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 4-11, 15-22, 26-33, which depended on claims 3, 14 and 25, therefore they are objectable.

### **Contact Information**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CINDY NGUYEN whose telephone number is (571)272-4025. The examiner can normally be reached on 8:30-5:00.

Art Unit: 2161

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Apu Mofiz can be reached on 571-272-4080. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. N./

Examiner, Art Unit 2161

/Apu M Mofiz/

Supervisory Patent Examiner, Art Unit 2161